Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59
	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97

COMMENTS OF THE AMERICAN ASSOCIATION OF HEALTHCARE ADMINISTRATIVE MANAGEMENT

The American Association of Healthcare Administrative Management ("AAHAM") respectfully submits these comments in response to the Federal Communication Commission's ("FCC" or "Commission") *Third Further Notice of Proposed Rulemaking*,[1] which seeks comment on, *inter alia*: (i) a safe harbor for voice service providers that block calls in certain scenarios; and (ii) protections and remedies for callers whose calls are erroneously blocked. As discussed below, while AAHAM commends the Commission for its efforts to eliminate unlawful calls and drive further adoption of SHAKEN/STIR, the Commission's rules must ensure that legitimate organizations may continue to place lawful calls without the threat of overbroad call blocking. The Commission can accomplish these twin goals by:

- Sunsetting parts of the June 2019 *Declaratory Ruling* that allow for opt-out call blocking based on "reasonable analytics" and clarifying that, once the SHAKEN/STIR framework has been fully implemented, voice service providers are permitted to block on an opt-out basis only those calls: (1) that have not been properly authenticated under SHAKEN/STIR; or (2) that are otherwise illegal;

[1] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC 19-51 (rel. June 7, 2019) ("*Third Further Notice*" or "*Declaratory Ruling*").

- Adopting a call blocking safe harbor only after all voice service providers have implemented SHAKEN/STIR;

- Requiring voice service providers relying on any safe harbor to establish and adhere to clear policies and procedures for fixing erroneously blocked calls; and

- Requiring that any calls that qualify for the "critical calls list" or carrier-provisioned "whitelists" include healthcare-related calls and texts.

AAHAM is the premier professional organization in healthcare administrative management focused on education and advocacy in the areas of reimbursement, admitting and registration, data management, medical records, and patient relations. AAHAM was founded in 1968 as the American Guild of Patient Account Management. Initially formed to serve the interests of hospital patient account managers, AAHAM has evolved into a national membership association that represents a broad-based constituency of healthcare professionals. Professional development of its members is one of the primary goals of the association. Publications, conferences and seminars, benchmarking, professional certification and networking offer numerous opportunities for increasing the skills and knowledge that are necessary to function effectively in today's health care environment.

AAHAM actively represents the interests of healthcare administrative management professionals through a comprehensive program of legislative and regulatory monitoring and its participation in industry groups such as ANSI, DISA, and NUBC. AAHAM is a major force in shaping the future of health care administrative management, and one of its main focuses has been on efforts to ensure that stakeholders in the healthcare ecosystem can place calls that consumers expect. To that end, AAHAM urges the Commission to take the following measures to protect legitimate callers from call blocking that leads to overbroad false positives.

First, the Commission should adopt a sunset provision on certain elements of the June 2019 call blocking *Declaratory Ruling* that will become redundant once SHAKEN/STIR is

implemented widely. Once the SHAKEN/STIR framework has been operationalized, voice service providers should be permitted to block on an opt-out basis only those calls: (1) that have not been properly authenticated under SHAKEN/STIR; or (2) that are otherwise illegal.

The *Declaratory Ruling* accompanying the *Third Further Notice*, as adopted in June 2019, allows voice service providers to block categories of so-called "unwanted" calls on an opt-out basis using so-called "reasonable analytics."[2] The basket of factors that might compose "reasonable analytics" include, but are not limited to, low call completion ratios, sequential dialing patterns, and low average call duration.[3] The Commission tempered this ability by requiring "that voice service providers offering opt-out call-blocking programs must offer sufficient information so that consumers who do not want to participate, make the opt-out process simple and easily accessible."[4]

The SHAKEN/STIR framework, in contrast, has been touted by voice service providers and the Commission as an accurate technical solution to malicious calls from bad actors.[5] The key benefit of SHAKEN/STIR is that it eliminates ill-defined guesswork on the part of voice service providers about the types of calls that should be blocked. Under SHAKEN/STIR, voice service providers would cryptographically sign calls originating from their network, and that signature would be checked and confirmed by the terminating voice service provider. The absence of a match indicates that a malicious actor has attempted to spoof another number or bypass the SHAKEN/STIR framework altogether. A key benefit of SHAKEN/STIR is that it eliminates subjective speculation about whether a specific call is a "robocall," let alone

[2] *Declaratory Ruling* ¶¶ 34-35.

[3] *Id.*

[4] *Id.* ¶ 32.

[5] *See, e.g.*, Comments of CTIA, CG Docket No. 17-59 (filed July 20, 2018).

"unwanted," because the SHAKEN/STIR technology is limited to an objectively determinable check on whether the call has been properly authenticated.

Once SHAKEN/STIR has achieved widespread penetration, it will become unnecessary—and indeed counterproductive—for voice service providers to resort to more primitive methods of "reasonable analytics" to determine whether a "robocall" is "unwanted." Accordingly, the Commission should clarify that continued reliance on these outdated technologies on an opt-out basis no longer constitutes a "just and reasonable" practice under Section 201 of the Communications Act, due to the false positives that might arise from the over-blocking of lawful, legitimate calls that also pass SHAKEN/STIR. The Commission's clarification to that end would also streamline the regulatory landscape by removing duplicative regulations that may cause confusion for callers, carriers, and consumers. It would also harmonize potentially conflicting elements of the *Declaratory Ruling* and *Third Further Notice*.

In short, the Commission should clarify that the permissibility of opt-out blocking based on "reasonable analytics" is provisional, pending completion of SHAKEN/STIR. Once the SHAKEN/STIR framework has been fully implemented, voice service providers should be permitted to block only those calls: (1) that have not been properly authenticated under SHAKEN/STIR; or (2) that are otherwise illegal.

Second, any safe harbor for call blocking also should apply only after all carriers have fully implemented SHAKEN/STIR. Otherwise, a call could be attested by the originating provider and then be routed through a provider that has not adopted SHAKEN/STIR, and then not recognized as signed by the terminating provider and be blocked. A number of lawful, legitimate calls may not be fully attested. For example, calls originating from conventional (older) TDMA telephone networks may not be fully attested. Thus, those calls, once they travel

through a VoIP network, may pass unsigned. Or, if the call travels through a gateway, the call may be given a level of gateway attestation. If such calls are blocked, then VoIP subscribers may be blocking calls from other U.S. subscribers in rural areas. Likewise, a number of smaller or rural carriers may not adopt SHAKEN/STIR until much later. Simply put, prematurely affording a safe harbor for call blocking based on SHAKEN/STIR incentivizes far too many false positives.

Third, the Commission must require voice service providers relying on any safe harbor to establish and adhere to clear policies and procedures for fixing erroneously blocked calls and texts within a reasonable timeframe. If voice service providers are to enjoy immunity from the Commission's rules, they should be required to provide transparent expectations and fair treatment for legitimate callers. Fair treatment, for example, would preclude carriers from blocking callers based on factors that are arbitrary or unsupported by appropriate facts and data. Such procedures would also reduce any burdens the Commission may face by encouraging cooperation among callers and the voice service providers, both of which share the mutual interest in reducing calls by unlawful spoofers, scammers, and bad actors.

As one example, the Commission should "require voice service providers to send an intercept message to blocked callers . . . when calls are blocked."[6] As the accompanying *Declaratory Ruling* observes, "a reasonable call-blocking program instituted by default would include a point of contact for legitimate callers to report what they believe to be erroneous blocking as well as a mechanism for such complaints to be resolved."[7] Legitimate callers cannot, however, report erroneous call blocking and avail themselves of the Commission's

[6] *Third Further Notice* ¶ 58.

[7] *Declaratory Ruling* ¶ 38.

mandated procedures to resolve complaints unless those callers have actual notice that their calls are being blocked. Actual notice provides certainty for callers and eliminates the possibility of reporting call blocking where no blocking has occurred. Likewise, callers will under-report if they are not even aware that their calls are being blocked. Either way, the Commission cannot effectuate any reasonably crafted dispute resolution mechanism unless carriers notify callers that their calls are being blocked.

The Commission can implement a notification requirement in any number of ways. One solution outlined in the *Third Further Notice* would be to require voice service providers to send an intercept message with a Session Initiation Protocol ("SIP") code to blocked callers. A SIP code—specifically the 608 code—would notify calling parties that an intermediary has rejected the call attempt and future call attempts are likely to fail.[8] This protocol has already been developed and appears to be relatively feasible for carriers to operationalize alongside SHAKEN/STIR.[9] Challenge mechanisms also should be provided cost-free to legitimate callers. Because bad actors are unlikely to leverage dispute resolution channels, sending callers an intercept message with an SIP code will not lead to the type of widespread misuse that would increase the number of illegal calls.

Fourth, the Commission should play an adjudicatory oversight role of last resort in the event that voice service providers' dispute resolution procedures break down. The Commission asks whether "there [are] any aspects of the governance authority that the Commission should handle itself or [whether] the Commission's role [should] be limited to . . . formal oversight."[10]

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[8] *See Third Further Notice* ¶ 58 n.106.

[9] *See* E. Burger *et al*., *A Session Initiation Protocol (SIP) Response Code for Rejected Calls* (Apr. 7, 2019), https://tools.ietf.org/html/draft-ietf-sipcore-rejected-06#section-5.1

[10] *Third Further Notice* ¶ 79.

Serving as a venue to which legitimate callers can directly appeal will help the Commission implement SHAKEN/STIR without sacrificing the interests of legitimate callers or depriving consumers of the calls they expect.

Commission oversight will be necessary because private industry—specifically voice service providers—have developed SHAKEN/STIR without significant regulation to date. ATIS's Secure Telephone Identity Governance Authority ("STI-GA") is solely composed of voice service providers,[11] and the STI-GA selected iconectiv as the Policy Administrator to "apply and enforce the rules as defined by the STI-GA to operationalize the SHAKEN . . . framework."[12] While voluntary industry efforts to date are laudable and appreciated, the Commission should serve as a backstop in case any issues may arise.

The Commission's oversight will be necessary to effectuate the protections for legitimate callers adopted in this proceeding. Without Commission involvement, there is no guarantee, for example, that voice service providers will resolve complaints from callers in a transparent and expeditious manner. Moreover, without external oversight, it remains unclear whether voice service providers will be incentivized to timely implement the safeguards the Commission may adopt in this proceeding, such as SIP code notifications to callers that their calls are being blocked. There is ample precedent for an oversight framework. The Commission's role here would be similar, by way of example, to the one it has played in other contexts, such as multi-

[11] *See* ATIS, *STI Governance Authority*, "Leadership," https://www.atis.org/sti-ga/leadership/ (last visited July 15, 2019).

[12] iconectiv, Press Release, *Mitigating Illegal Robocalling Advances with Secure Telephone Identity Governance Authority Board's Selection of iconectiv as Policy Administrator* (May 30, 2019), https://iconectiv.com/news-events/mitigating-illegal-robocalling-advances-secure-telephone-identity-governance-authority.

channel video programming distribution ("MVPD") carriage consent negotiations and impasses in broadband infrastructure siting agreements between wireless carriers and municipalities.

Finally, the Commission should require that any calls qualifying for the "critical calls list" or carrier-provisioned "whitelists" include healthcare-related calls and texts. In 2015, the Commission granted AAHAM's request for an exemption from the Telephone Consumer Protection Act's ("TCPA") consent requirements. The Commission ruled that no consent would be required for certain non-marketing calls by Health Insurance Portability and Accountability Act ("HIPAA")-regulated entities where the consumer was not charged for the call or text.[13] The Commission has also afforded similar treatment to a host of time-sensitive calls and texts.[14] Similarly, the *2015 Omnibus TCPA Order* clarified that the provision of a phone number to a healthcare provider constitutes prior express consent for healthcare calls subject to HIPAA by a HIPAA-covered entity and business associates acting on its behalf.[15] In granting these special rules for healthcare calls and texts, the Commission acknowledged AAHAM's position that these calls and texts provide "vital, time-sensitive information patients welcome, expect, and often rely on to make informed decisions."[16] It would run contrary to the purpose of the TCPA and the Commission's past rulings if voice service providers were allowed to block these calls.

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[13] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling and Order, 30 FCC Rcd 7961 ¶ 147 (2015) ("*2015 Omnibus TCPA Order*"), *rev'd in part by ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

[14] *Cargo Airline Association Petition for Expedited Declaratory Ruling*, Order, CG Docket No. 02-278 (2014).

[15] *2015 Omnibus TCPA Order* ¶ 146.

[16] *Id.* ¶ 143.

AAHAM applauds the Commission for releasing the *Third Further Notice* and encourages the Commission to implement protections to safeguard against overbroad call blocking. Doing so will help bring certainty to good-faith callers, including the many thousands of healthcare professionals within AAHAM's membership that serve patients every day.

Respectfully submitted,

/s/ Richard A. Lovich
Richard A. Lovich
General Counsel
American Association of Healthcare
Administrative Management
303 North Glenoaks Blvd. 7th Floor
Burbank, CA 91502
(818) 559-4477
rlovich@sacfirm.com
Counsel for the American Association of Healthcare Administrative Management

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